Office - Supreme Court, U.S.
FILED
FEB 22 1982
ALEXANDER L. STEVAS,
CLERK

Nos. 80-1798, 80-1808 and 81-91

IN THE

Supreme Court of the United States

October term, 1981

WOELKE & ROMERO FRAMING, INC.,

Petitioner,

vs.

NATIONAL LABOR RELATIONS BOARD; CARPENTERS LOCAL NO. 944, UNITED BROTHERHOOD OF CARPENTERS AND JOINERS OF AMERICA, AFL-CIO; and CARPENTERS LOCAL NO. 235, UNITED BROTHERHOOD OF CARPENTERS AND JOINERS OF AMERICA, AFL-CIO,

Respondents.

PACIFIC NORTHWEST CHAPTER OF THE ASSOCIATED BUILDERS & CONTRACTORS, INC.

Petitioner,

vs.

NATIONAL LABOR RELATIONS BOARD,

Respondent.

OREGON-COLUMBIA CHAPTER, THE ASSOCIATED GENERAL CONTRACTORS OF AMERICA INC.,

Petitioner,

vs.

NATIONAL LABOR RELATIONS BOARD,

Respondent.

On Writs of Certiorari to the United States Court of Appeals for the Ninth Circuit

---

REPLY BRIEF OF PETITIONER OREGON-COLUMBIA CHAPTER, THE ASSOCIATED GENERAL CONTRACTORS OF AMERICA, INC.

Lewis K. Scott
David H. Wilson, Jr.
800 Pacific Building
520 S. W. Yamhill
Portland, Oregon 97204
(503) 226-6151
Counsel for Petitioner
Oregon-Columbia Chapter,
The Associated General
Contractors of America, Inc.

TABLE OF CONTENTS*

Page

1. The Board ignores Congress' "major aim" of outlawing broad top-down organizing caused by this signatory subcontractor clause. 1
2. The legislative history does not support, but is contrary to, the Board's new argument that the proviso's purpose is to secure job opportunities and continuity of fringes for all union members. 2
3. The Board's new argument has additional errors in that it misstates the practice of general contractors, fails to recognize that subcontractors' nonunion employees are forced into the union with their jobs, and misrepresents the law applicable to fringe benefits. 5
4. The Board's description of legislative history is a distorted narrow selection which misstates Congress' perception of the status of the law and of the industry practice relating to this kind of top-down organizing clause, and avoids Congress' intent to outlaw such clauses. 7
   a. The Board's unpersuasive authority. 8
   b. The 1959 "pattern of bargaining." 9
   c. 1959 law. 10
5. The "legitimate forms" of agreement Congress intended to preserve by the construction proviso were union standards clauses and did not include broad signatory subcontractor clauses used to top-down organize. 12
6. The "protections" against top-down organizing alleged by the Board give no protection. 15
7. The Board's effort to reconcile its ruling with *Connell* is seriously flawed. 17
8. The Congressional purpose must not be frustrated by literalism. 19

*The list of related entities required by Rule 28.1 of the Rules of the Supreme Court of the United States is provided on page 2, footnote 1, of AGC's Petition for Writ of Certiorari.

TABLE OF AUTHORITIES

Cases:	Page
Carpenters Local 944 (Woelke & Romero Framing, Inc.), 239 NLRB 241 (1978)	6
Carrier Air Conditioning Co. v. NLRB, 547 F2d 1178 (2d Cir 1976)	6
Cohen Bros. Fruit Co., 166 NLRB 88 (1967)	15
Commerce Tankers v. Nat. Maritime U. of America, 553 F2d 793 (2d Cir 1977)	17
Connell Co. v. Plumbers & Steamfitters, 421 US 616 (1975)	passim
Consol. Exp. Inc. v. N.Y. Shipping Ass'n, 602 F2d 494 (3rd Cir 1979)	17
Construction, Production, Etc., Local 383 (Colson and Stevens), 137 NLRB 1650 (1962), rev'd in part 323 F2d 422 (9th Cir 1963)	20
Contractors, Etc. v. Associated Wrecking Co., 638 F2d 1128 (8th Cir 1981)	16
Four Winds Industries, Inc., 228 NLRB 1124 (1977)	15
General Stencils, Inc., 195 NLRB 1109 (1972)	15
Local 282, Teamsters, 197 NLRB 673 (1972)	14
Local 1976, U. B. C. & J. v. NLRB (Sand Door), 357 US 93 (1958)	10, 11
Meat and Highway Drivers, Etc., Local No. 710 (Wilson & Co.), 143 NLRB 1221 (1963)	13
NLRB v. Denver Bldg. & Constr. T. Council, 341 US 675 (1951)	17
NLRB v. Iron Workers (Higdon Construction Co.), 434 US 335 (1978)	4, 16
NLRB v. Local U. No. 141 of Sheet Metal Wkrs'. Int. Ass'n., 425 F2d 730 (6th Cir 1970)	14
NLRB v. Pipefitters (Plumbers, Local 638), 429 US 507 (1977)	20
New Mexico Dist. Council, Etc. v. Mayhew Co., 664 F2d 215 (10th Cir 1981)	16
Northern California Chapter, 119 NLRB 1026 (1957), enforced *sub. nom. Operating Engineers Local Union No. 3, Etc. v. NLRB*, 266 F2d 905 (DC Cir 1959), cert den 361 US 834 (1959)	10, 11

Cases: Page

Pacific Northwest Chapter, Etc. v. NLRB, 654 F2d 1301 (1981) 3

Rosen v. NLRB, 455 F2d 615 (3rd Cir 1972) 7

United Mine Workers v. Pennington, 381 US 657 (1965) 17

Woodwork Manufacturers Asso. v. NLRB, 386 US 612 (1967) ..... passim

Statutes:

29 USC § 186(c)(5)(B) 7

Labor Management Relations Act, Section 302 7

National Labor Relations Act:

Section 7 (29 USC § 157) 17

Section 8(b)(4) (29 USC § 158(b)(4)) 10, 11, 18

Section 8(b)(7) (29 USC § 158(b)(7)) 15, 18

Section 8(e) (29 USC § 158(e)) ..... passim

Section 8(f) (29 USC § 158(f)) 2, 3, 4, 15

Rules:

Federal Rules of Evidence, Rule 201 10

Miscellaneous:

105 Cong. Rec. (1959) ..... passim

1 NLRB, Legislative History of the Labor-Management Reporting and Disclosure Act of 1959 11

2 NLRB, Legislative History of the Labor-Management Reporting and Disclosure Act of 1959 ..... passim

93 Lab Rel Reporter 394-395 9

1976 Labor Relations Yearbook 309 9

Hearings before a Joint Subcommittee of the Committee on Education and Labor, House of Representatives, 86th Cong., 1st Sess. on H. R. 4474 and Related Bills Regarding Labor-Management Reform Legislation (1959)..... passim

Hearings before the Subcommittee on Labor of the Committee on Labor and Public Welfare, United States Senate, 86th Cong., 1st Sess. on S. 505, S. 748, S. 76, S. 1002, S. 1137 and S. 1311, Bills pertaining to Labor-Management Reform (1959) 3, 10

Page

Pierson, *Building Trades Bargaining Plan in Southern California*, 70 Monthly Lab. Rev. 14 (1950)..... 9

Lunden, *Subcontractor Clauses in Major Contracts*, 84 Monthly Lab. Rev. 579 (1961)..... 9

IN THE

Supreme Court of the United States

October term, 1981

Nos. 80-1798, 80-1808 and 81-91

WOELKE & ROMERO FRAMING, INC.,

Petitioner,

VS.

NATIONAL LABOR RELATIONS BOARD; CARPENTERS LOCAL NO. 944, UNITED BROTHERHOOD OF CARPENTERS AND JOINERS OF AMERICA, AFL-CIO; and CARPENTERS LOCAL NO. 235, UNITED BROTHERHOOD OF CARPENTERS AND JOINERS OF AMERICA, AFL-CIO,

Respondents.

PACIFIC NORTHWEST CHAPTER OF THE ASSOCIATED BUILDERS & CONTRACTORS, INC.

Petitioner,

VS.

NATIONAL LABOR RELATIONS BOARD,

Respondent.

OREGON-COLUMBIA CHAPTER, THE ASSOCIATED GENERAL CONTRACTORS OF AMERICA, INC.,

Petitioner,

VS.

NATIONAL LABOR RELATIONS BOARD,

Respondent.

On Writs of Certiorari to the United States Court of Appeals for the Ninth Circuit

REPLY BRIEF OF PETITIONER OREGON-COLUMBIA CHAPTER, THE ASSOCIATED GENERAL CONTRACTORS OF AMERICA, INC.

1. The Board ignores Congress' "major aim" of outlawing the broad top-down organizing caused by this signatory subcontractor clause. The extensive briefs and the Board's selective approach must not obscure the central issue: To determine the balance intended by Congress between (1) prohibiting secondary boycott

agreements that top-down organize, and (2) accommodating special construction industry needs; specifically, in striking that balance did Congress intend that the construction proviso legalize the broad top-down organizing of this signatory subcontractor clause which is applicable at all times to all jobs, simply because the union represents (or seeks to represent) one or more of the general contractor's employees on some job at some time?

The Board's[1] brief omits virtually half of that balance: It omits discussing Congress' "major aim" (*Connell*, 421 US at 632) of limiting top-down organizing. It omits the extensive legislative history of assuring uncoerced employee choice of representative. It omits Congress' purpose of assuring employer free choice in business dealings by strengthening secondary boycott prohibitions. It omits *Connell's* reasoning which condemns a nearly identical clause. It even omits from its statement of the case the basic requirement of Local 701's contract that all signatory subcontractors' employees join Local 701. It omits discussing the broad top-down organizing impact of this signatory subcontractor clause. Nor does the Board respond to our opening brief which examines these points. In short, the Board avoids examining the first half of the balance: Congress' basic purpose of limiting top-down organizing caused by secondary boycott agreements—which is flagrantly violated by this broad clause. The Board thereby avoids a meaningful examination of Congress' balance which is the issue in this case.

2. **The legislative history does not support, but is contrary to, the Board's new argument that the proviso's purpose is to secure job opportunities and continuity of fringes for all union members.** The Board's one-sided analysis seriously misstates—with a substantially new argument—the special construction industry needs which Congress intended to accommodate by the § 8(e) proviso. As shown in our opening brief (pp 27-35), the special construction industry characteristics recognized by Congress were (1) the short duration of jobs with the need to know labor costs in advance and to have a source of skilled workers (accommodated by § 8(f)), (2) the special threat to union wage standards posed by workers paid at substandard rates on the same jobsite, and (3) risks of jobsite friction between union and nonunion workers. But these characteristics cannot justify the broad top-down organizing of this

[1]The unions' arguments are essentially the same as the Board's. For simplicity, we will refer primarily to the Board and the Board's brief.

subcontractor clause since all of these concerns can be accommodated without need for the drastic restraint of excluding from the market every subcontractor whose employees have selected a different union or no union (*Ibid*). However, the Board now makes the new[2] argument that Congress' purpose when enacting the proviso was to secure "job opportunities" and "continuity" of fringe benefits for the entire "pool of union-represented employees" (Brd Br pp 24-25, n. 26).

The Board cites nine legislative statements as authority for this argument (Brd Br p 22, n. 23). None supports it. None even concerns secondary subcontractor clauses. Rather, they all concern proposals to legalize prehire agreements relating to contractors' own employees, not the employees of their subcontractors. They include *no* discussion of securing for union members "job opportunities" with subcontractors or of "continuity" of benefits. They include no approval (or even discussion) of agreements with general contractors that exclude from the market nonsignatory subcontractors—who may already have a full employee complement and have no need for a prehire agreement.

The Board-cited legislative statements are, in fact, contrary to the Board's position. They express legislative concern over even § 8(f)'s limited infringement on employee rights—namely, recognition of a union which may not represent the employees later hired[3]—and are thus contrary to the Board's argument that Congress intended to disregard employee rights by allowing broad top-down organizing clauses. The very record cited by the Board assures otherwise: Congress opposed legislation that "would

---

[2]This argument differs from those below and in the Board's brief opposing *certiorari*. The Board's decision reasoned that the proviso's purpose is irrelevant when there is a "collective bargaining relationship" so did not even examine that purpose; the Board makes no such argument here. The court majority below reasoned that the proviso's purpose was to satisfy the need for "maintaining wage levels" and other economic benefits on construction jobs (654 F2d at 1316; J.A. 87), and so did the Board's brief opposing *certiorari* (p 8); the Board apparently no longer relies on that unsound argument. Nor does the Board now argue (as did the majority below, see 654 F2d at 1309, J.A. 72) that the prejob needs of knowing labor costs and having a source of skilled workers somehow justify this clause.

[3]E.g., Hearings before the Subcommittee on Labor of the Committee on Labor and Public Welfare, United States Senate, 86th Cong., 1st Sess. on S. 505, S. 748, S. 76, S. 1002, S. 1137 and S. 1311, Bills pertaining to Labor-Management Reform, p. 137 (1959)(statement of Archibald Cox)(hereafter "Senate Hearings").

unreasonably interfere with the freedom of employees to choose their own bargaining representatives" and it was assured that the legislation adopted would not "open the door" to the practices "disclos[ed] before the McClellan committee related to employees ... who were forced into ... unions not of their own choosing."[4]

Furthermore, the legislative history cited by the Board emphasizes Congress' express "intent" that prehire agreements be "voluntary": a union may not "strike, picket or otherwise coerce an employer to sign a prehire agreement" (105 Cong. Rec. 18128 (1959); 2 Leg Hist 1715 (Senator Kennedy), quoted in *NLRB v. Iron Workers (Higdon Construction Co.)*, 434 US 335, 348, n. 10 (1978)). The legislative history cited by the Board is thus not only devoid of evidence of any purpose to secure "job opportunities" or "continuity" of fringe benefits but is directly contrary to the Board's argument that Congress intended to license broad top-down organizing through signatory subcontractor clauses and intended to sanction strikes to secure them.

Particularly revealing is the Board-cited statement of Richard J. Gray, then president of the AFL-CIO Building and Construction Trades Department.[5] Describing how the proposed legislation would function, Mr. Gray states that "the method chosen by S. 1555 [which later became § 8(f)] to accomplish the object of validating the prehire agreement in the building and construction industry ... strikes the most sensible balance between the economic needs of the industry and the preservation of freedom of choice by the employees" (*Id* at 1731). He explains that "balance" as follows: An employer can enter into a prehire agreement if he "wishes" but this will not infringe on the rights of employees (*Ibid*); "[o]f course" if an employer operates "on a nonunion basis" then "he will have no reason for entering into an agreement with any kind of union" (*Ibid*); and if an employer "wishes" to make a prehire agreement but does not in fact later employ union members, the agreement is no bar to an election so that the "choice of the employees" can later be

---

[4]105 Cong. Rec. H14205 (daily ed. August 11, 1959), 2 Leg Hist 1578 (remarks of Reps. Thompson and Udall, incorporating speech by Speaker Rayburn in support of Section 702 of the House committee's bill, which later became § 8(f), and in opposition to the alternative proposal to allow Board certification without an election).

[5]Hearings before a Joint Subcommittee of the Committee on Education and Labor, House of Representatives, 86th Cong., 1st Sess. on H. R. 4474 and Related Bills Regarding Labor-Management Reform Legislation, p. 1727 (1959) (hereafter "House Hearings").

determined (*Ibid*). Nowhere does Mr. Gray suggest that the "balance" Congress struck was intended to give unions the right to *impose* prehire contracts or any other labor contracts on subcontractors through the device of a signatory subcontractor clause. Nor does any other statement in the entire legislative record assert such a purpose. Yet *that* is the Board's contention here.

3. **The Board's new argument has additional errors in that it misstates the practice of general contractors, fails to recognize that subcontractors' nonunion employees are forced into the union with their jobs, and misrepresents the law applicable to fringe benefits.** The Board's new argument is erroneous for additional reasons: First, the Board erroneously describes the "practice" of general contractors to be to elect on each job whether to perform the particular work themselves (with their own employees) or to subcontract it (Brd Br 2-3); the Board argues that Local 701 therefore needs this subcontractor clause to protect its members' jobs, which on any project may be either done by the general contractor or subcontracted (Brd Br 10, 23-24). The actual practice of general contractors is entirely different. Each general contractor regularly performs certain types of work with his own employees: he has the experience, equipment and managerial skills to perform it and does not subcontract it. Other types of work he has neither the equipment, experience nor skills to perform—or even to independently bid—and therefore he regularly lets it to subcontractors.[6] Although practices of different general contractors vary depending on their own expertise, each has a tradition of the limited work he does himself.

Furthermore, Local 701's labor contract (and the subcontractor clause) covers *all* kinds of heavy equipment operation even though the particular general contractor *always* subcontracts many kinds of such work.[7] The Board's argument that this clause is justified "'to preserve and protect the work opportunities normally available to

---

[6]For example, a building contractor may traditionally perform with his own employees only the rough structural carpentry forming (and related laboring and ironwork) on concrete commercial structures, and subcontract virtually all other work: he may, for example, never employ any crane operators or concrete pump operators—always subcontracting such work to those having the needed costly equipment and experienced personnel.

[7]For example, it covers operation of concrete pumps and cranes and dozens of other operations (R 91, 92, etc.) which are always subcontracted by virtually every general contractor.

employees'" of the general contractor (Brd Br 4, 24)[8] is thus unsound. Local 701 cannot preserve for the general contractor's employees work which they have not performed. And the work which the particular contractor's employees *have* traditionally performed can be protected by a primary work preservation clause without need for this broad signatory subcontractor clause. *Woodwork Manufacturers Asso. v. NLRB*, 386 US 612 (1967); *Carrier Air Conditioning Co. v. NLRB*, supra. Nor can the Board support its contention that the proviso's purpose is to extend beyond such primary protections and protect the job opportunities of the entire "pool of union-represented employees" (Brd Br 24, n. 26), for (as shown above) there is no support in the legislative history for such an alleged purpose.[9]

Second, this subcontractor clause does not even have the effect of securing "job opportunities" for the "pool of union-represented employees" because it organizes subcontractors' nonunion employees and *adds them* to that pool. As illustrated by the very legislative testimony cited by the Board, the existing "pool of union-represented" employees is being "constantly employed" by the group of all of the employers with union labor agreements (*House Hearings*, 579). This clause forces employees of nonunion or wrong-union subcontractors into the "pool" and thus the number of workers in the pool is expanded with the number of jobs. Because the ratio of union workers to union jobs is not affected by this clause, it does nothing to improve any union worker's opportunity for obtaining work; instead, by forceably adding the subcontractors' employees (along with their jobs) to the pool, this clause operates simply to organize those employees from the top down.

---

[8]The Board quotes the self-serving language of the *Woelke* clause. As observed by Chief Judge Oaks about a similar "purpose" clause, "One can only surmise that the ... language was window dressing, intended to impress ... a reviewing court" *Carrier Air Conditioning Co. v. NLRB*, 547 F2d 1178, 1185, n. 6 (2d Cir 1976), cert den 431 US 974.

[9]The only reference in all the Board's citations to a "pool" of union-represented employees is in the testimony of Frank J. Rooney (who was chairman of the national AGC labor committee, *House Hearings*, 573) and William E. Dunn (assistant executive director of the national AGC, *Id* at 574). But their statements do nothing to support the Board. They were discussing solely the need for *prehire* agreements by general contractors, not secondary subcontractor clauses. They suggested that the holdings that might outlaw prehire agreements in the construction industry were inapplicable to multi-employer groups whose member-employers, among them, employed all of the union's members in the "pool" so that considered as a group, their labor contract was not entered before employees were hired (*House Hearings*, 579, 586, 595-596).

Third, the Board's unsupported argument that subcontractor clauses are necessary to assure "continuity of pension, health care, and other fringe benefits" (Brd Br 25, n. 26) is baseless: The Board states that under § 302 of the LMRA "unless the subcontractor performing the construction work is signatory to the applicable union contract, it cannot contribute to the fringe benefit trust funds" (Brd Br 25, n. 26). This is false. Section 302 requires only that "the detailed basis on which [contributions] are to be made is specified in *a* written agreement with the employer" (29 USC § 186(c)(5)(B), emphasis added); it does not require the "written agreement" to be a labor contract, much less one that requires employees to join the union. Nothing in § 302 or elsewhere requires trust beneficiaries to be represented by or members of any union; on the contrary, such a requirement would be unlawful discrimination (see e.g.: *Rosen v. NLRB*, 455 F2d 615 (3rd Cir 1972)). Thus any employer, even if he has a contract with no union or the wrong union, can lawfully contribute to trust funds as long as he is *party to an agreement which specifies the basis for those contributions*. It follows that even if, as the Board erroneously asserts, the 1959 Congress had been concerned with "maintain[ing]" the "flow of contributions into the fund" (Brd Br 25, n. 26), this end can be achieved without forcing employees to join the union against their wishes, in direct contravention to a dominant purpose of the 1959 legislation.

Furthermore, the "continuity" of union members' benefits is based on their *own* work for contractors with union labor contracts, and is not affected by the fact that subcontractors' employees may not be covered by the same trusts. The union members' interest in *their* continuity of fringe benefits does nothing to justify a union power to force subcontractors to contribute to these trusts on behalf of the subcontractors' employees—who may prefer an alternative method of retirement security or medical care.

Nor does the Board (or unions) cite anything in the legislative history even suggesting that Congress perceived that union members' "continuity of fringes" somehow needed special protection in the construction industry or that the proviso to § 8(e) was intended to supply it.[10]

4. The Board's description of legislative history is a distorted narrow selection which misstates Congress' perception of the

---

[10]The Board erroneously implies that trusts under § 302 of the LMRA are a unique characteristic of the construction industry. They are actually common in most industries.

status of the law and of the industry practice relating to this kind of top-down organizing clause, and avoids Congress' intent to outlaw such clauses. The imbalance of the Board's brief is particularly acute in its review of legislative history, which is only a narrow selection removed from context and makes no effort to "reconstitute the gamut of values current at the time" (*Woodwork Manufacturers Asso. v. NLRB*, 386 US 612, 620 (1967)). Most significantly, and as already noted, the Board omits discussing the pervading congressional purpose of limiting top-down organizing.

a. **The Board's unpersuasive authority.** Even the Board's few selections from the lengthy Congressional record are directly opposed to the Board's broad interpretation of the § 8(e) proviso: Senator Curtis' quoted statement (Brd Br 15) reflects his *opposition* to broad subcontractor clauses in the construction industry and his intention to prevent them. The members of the House Subcommittee who heard the quoted witness' statements about top-down organizing through a subcontractor clause (Brd Br 16-17) stated that in their "opinion . . . this is obviously an unfair labor practice and should be so ruled . . . but that if there is any question and the courts have any doubt about it, it is obviously the responsibility of the committee to write and correct the law so that there can be no such incident recur[;] [t]his is a manifest injustice" (*House Hearings*, 2368-9). Nor can these selections be used merely to show congressional awareness that some such clauses existed in 1959; the issue is what Congress intended to do about them, and even these selections show the clear intent to outlaw them. It is notable that the *only* citations the Board presents which discuss such clauses include explicit congressional disapproval and intent to outlaw them.

Except for the foregoing excerpts, the only legislative authority cited by the Board (or union) to support its position are the statements of Senator Kennedy and the Conference Committee discussed in our opening brief. We there show the many reasons why their reliance on these statements is misplaced (Ore AGC Br 38-47); neither the Board nor union has even responded to those points. We will not repeat them here. These "bare references" (*Connell*, 421 US at 629, n. 8), cannot reasonably be construed to intend to license broad top-down organizing simply because it is achieved by a subcontractor clause contained in a "collective bargaining relationship."

b. **The 1959 "pattern of bargaining."** The Board argues that subcontractor clauses like this were "part of the pattern of bargaining" throughout the industry in 1959 (Brd Br 15), but its only cited support is two articles. The first (Pierson, *Building-Trades Bargaining Plan in Southern California*, 70 Monthly Lab. Rev. 14 (1950)) relates only to an area in Southern California, suggests that the practice there is unique (*Id* at 15), and describes that practice as restraints on "any subcontractor who attempts to depart from the established union standards" (*Id* at 17). The existence of a practice involving "union standards" in a portion of one state a decade before § 8(e) was enacted hardly shows that signatory clauses were a nationwide pattern of bargaining in 1959.[11] The second article (Lunden, *Subcontractor Clauses in Major Contracts*, 84 Monthly Lab. Rev. 579, 715 (1961)) was previously found "inconclusive" by the Board's General Counsel because it did not distinguish various kinds of subcontractor clauses (see our Op Br p 45). The General Counsel's own study found union signatory clauses of any form in only eight (fewer than twelve percent) of the contracts examined, and concluded: "... The only 'pattern' that does emerge is that of a mosaic, i.e., many different practices that vary with the union and the geographic area involved."[12] Lunden himself concluded "Few provisions were found [in the construction industry] that attempted to preserve job opportunities .... On the other hand, the protection of contract standards was of major interest" (Lunden, at 715)—a conclusion directly contrary to the Board's argument here. By no stretch can the Pierson and Lunden articles establish that subcontractor clauses going beyond maintaining union standards were a 1959 industry wide "pattern of bargaining" that would suffer "serious damage" (105 Cong. Rec. S16414 (daily ed. September 3, 1959), 2 Leg Hist 1432 (Senator Kennedy)) by the prohibition of

---

[11]The Board falsely states the Pierson article "noted that similar bargaining arrangements also existed" in Portland, Oregon (Brd Br 15, n. 15); in fact the article says that the practice of standardizing "rates of pay and other basic work provisions for given job classifications" developed in Los Angeles and that in "certain other localities, notably Chicago, Portland (Oreg.), and Seattle, somewhat similar plans have been developed" (Pierson at 15). The article asserts only this rough similarity between the extent of standardization in Los Angeles and that in Portland; it makes no claim that any terms of any Portland contracts were similar to the terms of any Los Angeles contracts.

[12]93 Lab Rel Reporter at 394-395, 1976 Lab Rel Yearbook at 309.

certain types of signatory clauses (those unrelated to the prevention of jobsite friction).[13]

Equally infirm is the Board's contention that Congress at least *perceived* that union signatory subcontractor clauses were extensively used in 1959. The only evidence the Board cites on this question is testimony before a House Subcommittee that a single labor contract contained a signatory clause (Brd Br 16, citing *House Hearings*, at 2365) and a parenthetical phrase, unsupported by any citation to any evidence, contained in a lengthy written statement submitted by Senator Curtis to a Senate Subcommittee (Brd Br 15, quoting *Senate Hearings*, at 752). A subcommittee's awareness that of the thousands of construction labor agreements throughout the country, at least one contained a union signatory subcontractor clause, hardly supports the Board's claim; and the argument that Senator Curtis' isolated and unsubstantiated remark in a statement submitted to a subcommittee is proof of the state of mind of the entire Congress, is wholly unpersuasive.

c. **1959 law.** The Board argues that subcontractor clauses like this were lawful in 1959, citing only *Sand Door*[14] and *Northern California;*[15] but as shown in our opening brief (pp 41-43) neither those nor any other decision had clearly determined the lawfulness or enforceability or permissible scope of subcontractor clauses. In fact, *Sand Door* stated "There is no occasion to consider the invalidity of hot cargo provisions as such" (357 US at 107) and although it left the "possibility" (*National Woodwork*, supra, 386 US at 634) that such clauses were "lawful", the unmistakable implication of *Sand Door*, as observed by Senator Goldwater (*House Hearings* at 1647), is that such clauses were unenforceable (see our Op Br pp 42-43).[16] In *Northern California* the union's protest

[13]Furthermore, if the extent of 1959 signatory subcontractor clauses were relevant to this case (and it clearly is not), this would present a question of fact on which no findings were made by the Board (since neither *Connell* nor any other case decided at the time of the Board's decision herein ever stated that such an issue is relevant to the construction proviso) and which cannot be resolved by judicial notice. Rule 201(b) of the Federal Rules of Evidence. Accordingly, the only appropriate course would be to remand this case to the Board for resolution of that issue.

[14]*Local 1976, U. B. C. & J. (Sand Door)*, 357 US 93 (1958).

[15]*Northern California Chapter*, 119 NLRB 1026 (1957), enforced sub. nom. *Operating Engineers Local Union No. 3, Etc. v. NLRB*, 266 F2d 905 (DC Cir 1959), cert den 361 US 834 (1959).

[16]The statement in *National Woodwork* that § 8(e) was enacted in order to fill a "loophole" in § 8(b)(4) created by *Sand Door* (386 US at 634), is not to the

[*footnote continued next page*]

concerned union standards and there was friction when nonunion workers were "working alongside" union workers (119 NLRB 1026, 1030; see Ore AGC Br 41-42); and the Board ignores the fact that the Conference Committee statement on which it relies refers only to the present law "*under § 8(b)(4)*" (1 Leg Hist 943, emphasis added) whereas *Northern California* was decided under other provisions of the Act, not under § 8(b)(4), and is thus irrelevant to the Board's contention (see Ore AGC Br p 41).

The Board argues that Congress at least *perceived* subcontractor clauses like this to be lawful because "Congress" was "informed" that they were "lawful" and cites only a House Subcommittee hearing in which the *Northern California* decision was submitted (Brd Br 17, n. 16). But the Board omits the facts (stated in our Op Br pp 44-45) that at the very time the decision was submitted it was described to the subcommittee as a "decision by the court of appeals [that] makes it clear that the union and the employer had *violated* the unfair labor practice section of the Taft-Hartley Act" (*House Hearings*, 804, emphasis added), and that all subcommittee members who commented asserted not only that "this is obviously an unfair labor practice" but also that if "the courts have any doubt about it" then new legislation should make it clear so "there can be no such incident recur" (quoted above, *House Hearings*, 2368-9). Furthermore, the Board ignores the perceptions of Senator Goldwater (a member of the Subcommittee on Labor of the Senate Committee on Labor and Public Welfare and a conferee) that *Sand Door* "outlaw[s] hot cargo type of agreements" (*House Hearings*, at 1647), and of Representative Cramer that under existing law "hot-cargo contracts are unenforcible [sic]" (105 Cong. Rec. H14344 (daily ed. August 12, 1959), 2 Leg Hist 1620).[17]

---

contrary. As noted in *National Woodwork*, *Sand Door* simply created a "possibility" (*Ibid*) that secondary clauses were lawful. This was a "loophole" since the existing ban on secondary activity possibly, though not necessarily, omitted such clauses. Section 8(e) eliminated the doubt on this question by expressly forbidding such clauses. (see 105 Cong. Rec. S3524 (daily ed. March 12, 1959); 2 Leg Hist 1007 (Senator McClellan)).

[17]Although Senator Kennedy said that some hot cargo agreements "appear to be legal today" (105 Cong. Rec. S16415 (daily ed. September 3, 1959), 2 Leg Hist 1433), this tentative statement reflects only Senator Kennedy's private views; the statement of the Conference Committee (which begins, "[t]o the extent that such agreements are legal today . . ." (1 Leg Hist 943)) carefully avoids taking any position on the current state of the law. As Senator Kennedy's other comments show, his focus was on union standards clauses and not signatory clauses used for top-down organizing (see part 5 infra).

The Board's claim that Congress viewed signatory subcontractor clauses as lawful simply cannot be reconciled with these directly contradictory statements by key legislators in both houses.

5. The "legitimate forms" of agreement Congress intended to preserve by the construction proviso were union standards clauses and did not include broad signatory subcontractor clauses used to top-down organize.

a. The Board seeks support from the House-passed Landrum-Griffin bill, which had no exceptions to § 8(e). The Board argues that legislative complaints that these broad "prohibitions 'would also outlaw legitimate forms of collective agreement'" led to the Conference's addition of the construction proviso, which Senator Kennedy stated was "'necessary to avoid serious damage to the pattern of collective bargaining'" (Brd Br 19-20). But as shown by the Board's own legislative citations, *the "legitimate forms" of agreement intended to be preserved were those maintaining union wage standards*. Thus, Senator Kennedy and Representative Thompson's joint statement complained that if no exceptions were added, agreements not to do business with *employers paying low wages* would be illegal (105 Cong. Rec. H15222 (daily ed. August 20, 1959), 2 Leg Hist 1708); they complained that the "House bill ... would also outlaw legitimate forms of collective agreement" since "[t]he House bill makes it unlawful for an employer ever to accede to a union's request that he cease doing business with another employer who is failing to maintain fair labor standards" (*Ibid*). They say nothing about broad signatory subcontractor clauses such as this being legitimate or that their top-down organizing should be allowed. Nor did anyone else. Senator Kennedy's position when the proviso was added is no different than he and others had previously expressed in opposing any hot cargo ban that applied outside the trucking industry; Kennedy said that "it is in the public interest for employers and unions to agree not to do business with employers who pay substandard wages and maintain substandard working conditions" (105 Cong. Rec. S5972 (daily ed. April 24, 1959), 2 Leg Hist 1195; see Ore AGC Br p 32).[18]

---

[18]On that occasion Senator Kennedy also said:

"The effect of the amendment of the Senator from Arkansas would be to make it impossible for decent employers and employees to *protect their standards* in vital industries. *This is an economic issue*. It is a question of the

[*footnote continued next page*]

Similarly in the House the focus of concern was protecting construction wage standards; for example, Speaker Rayburn said:

> "Where all the men are employed on the same [construction] project . . . they work side by side and the wages and working conditions of one trade affect all the others. This situation is utterly unlike the situation in true secondary boycotts, as where carpenters in Los Angeles refuse to work on nonunion doors made in Minnesota by men whose wages could not affect the wages of carpenters in Los Angeles . . ." (105 Cong. Rec. H14204 (daily ed. August 11, 1959), 2 Leg Hist 1577)[19]

It is in this context that the later statements of Senator Kennedy and of the Conference Committee become meaningful. The Senate conferees' insistence on adding the construction proviso was *not* an intent to license broad top-down organizing by subcontractor clauses. It was an insistence that construction jobsites be protected from disruption caused by substandard wages. And this was done by allowing agreements not to do business with employers paying subunion wages on the jobsite.

b. The Board argues that "any union" can have a union standards clause because they are *primary* and suggests that the proviso was intended to give construction unions a greater right (Brd Br 24, n. 26). But as we pointed out in our opening brief (pp 32-33 and n. 42), unanswered by the Board, until many years *after* 1959 union standards clauses were held by the Board itself to be secondary (e.g. *Meat and Highway Drivers, Etc., Local No. 710 (Wilson & Co.)*, 143 NLRB 1221 (1963), remanded in part 335 F2d 709 (DC Cir 1964)), so the proviso was required to assure that construction unions had the right to such clauses on construction sites.

Furthermore, the proviso allows union standards clauses which have a secondary reach: it allows union standards clauses that apply to all jobsite work covered by the union's contract, including work which is not unit work (i.e. work traditionally performed by the union's members employed by the general contractor); in contrast,

---

right of unions, *so long as they do not strike or seek to put pressure on the employer,* to attempt to protect their standards . . . .

"This is not a question of racketeering. It is a question of legitimate activity to protect reasonable wages . . . ." (105 Cong. Rec. S5972 (daily ed. April 24, 1959), 2 Leg Hist 1195, emphasis added)

[19]See also 105 Cong. Rec. S16418 (daily ed. September 3, 1959), 2 Leg Hist 1436 (Senator Carroll), 105 Cong. Rec. H14215 (daily ed. August 11, 1959), 2 Leg Hist 1588 (Congressman Bolling on behalf of Congressman Elliott), 105 Cong. Rec. H14512 (daily ed. August 13, 1959), 2 Leg Hist 1684 (Congressman Goodall).

other unions can have only primary union standards clauses, which must be confined to unit work.[20] Congress considered the wages of other employers' employees on the same jobsite to have such a direct impact on all jobsite wages in that trade as to justify this exception (e.g. 105 Cong. Rec. H14204 (daily ed. August 11, 1959), 2 Leg Hist 1577 (Speaker Rayburn), supra).[21]

Finally, the proviso allows signatory clauses where their object is to avoid jobsite friction, whereas other unions have no such right. But such clauses must be confined to times and places where such friction is possible, namely to jobs when the union's members employed by the general contractor are present.

c. The terse comments of Senator Kennedy and the Conference Committee were certainly not intended to license all forms of subcontractor clauses even though they conflict with Congress' "major aim" of limiting top-down organizing, and serve none of the special needs of the construction industry which Senator Kennedy himself, and the others, described as their concern.

The Board's apparent hope is that this busy Court will be satisfied with a shallow inquiry, so that it will not delve beneath the Board's simplistic argument that "although Congress was urged to pass legislation banning secondary subcontracting agreements in the construction industry and the House passed a bill that would have had this effect, the Senate refused to agree and successfully insisted on a proviso designed 'to preserve the *status quo*'" (Brd Br 21). This argument disregards the pervading *purpose* of Congress—in both the House and Senate—to limit top-down organizing, and disregards the *purpose* of Congress when it recognized the special needs of the construction industry and struck a balance to accommodate those needs. As this Court made clear in *Connell* the scope of § 8(e) and its proviso is limited to Congress' *purpose* when enacting them (421 US at 628). The legislative record shows: (1) Congress' "major aim" throughout was to limit top-down

---

[20]Even construction unions must confine off-site union standards clauses to unit work, e.g. *Local 282, Teamsters*, 197 NLRB 673, 677 (1972) (Held: applying a union conditions clause to offsite work "traditionally ... done ... by employees of the suppliers and subcontractors who are outside the work units" of the general contractors violates § 8(e)); *NLRB v. Local U. No. 141 of Sheet Metal Wkrs'. Int. Assn.*, 425 F2d 730 (6th Cir 1970).

[21]Although jobsite friction between union and nonunion workers can occur only when both union and nonunion workers are present, substandard wages paid to operating engineers affect Local 701's members on the job even though they are not working there at the time.

organizing. (2) Congress was also concerned with the need for prehire contracts in the construction industry and adopted § 8(f) to accommodate that need, permitting *voluntary* labor agreements even though the contractor does not yet employ a representative labor force. (3) Congress was also concerned about jobsite friction between union and nonunion workers, and about protecting union standards on construction sites, and adopted the construction proviso to § 8(e) to accommodate those needs.

6. **The "protections" against top-down organizing alleged by the Board give no protection.** The Board asserts that concern over top-down organizing "misconceives the operation of subcontracting clauses" and that various "protections" "assure that the Act's policies of employee free choice and majority rule would be given effect in a manner suited to the practical realities of the construction industry" (Brd Br 27, 30). This is nonsense. None of the Board's alleged "protections" in any way inhibits the coercion exerted by this clause. Nor do any "practical realities" justify it.

a. The Board argues that organizational picketing of the *subcontractors* is limited to 30 days by § 8(b)(7)(C) (Brd Br 28). But there is no need under the Board's rule to picket any of the subcontractors since the union can picket the *general* contractor to force agreement to the subcontractor clause which organizes *all* his subcontractors at once from the top down; indeed, that is what these cases are all about. *And under the ruling below picketing of the general contractor for that purpose is without any limitation from § 8(b)(7)(C) or any other provision.*

b. The Board argues that if the subcontractor does succumb to the boycott and signs a contract his employees could later secure a Board election (Brd Br 28). But if the subcontractor's employees do not vote for the union, they will lose their jobs throughout all AGC projects—a substantial portion of the market. *As the Board has repeatedly recognized, it is an elementary premise of the Act that employees must not be coerced in the selection of their representative by threat of job loss.* Such threats are "one of the most flagrant means" of violating employee rights and are "especially repugnant to the purposes of the Act" *General Stencils, Inc.*, 195 NLRB 1109, 1109-10 (1972).[22]

---

[22] "The Board has long regarded the threat of job loss as having a seriously coercive effect on the employees' freedom of choice in the election of a collective bargaining representative" *Four Winds Industries, Inc.*, 228 NLRB 1124 (1977); and see *Cohen Bros. Fruit Co.*, 166 NLRB 88, 90 (1967).

c. The Board argues that the subcontractor might on a later project repudiate such a coerced agreement if a representative stable majority of his employees did not join the union, citing *Higdon*, supra, 434 US 335 (Brd Br 28-29). But the subcontractor is probably powerless to repudiate the contract[23] and, in any event, the same economic coercion that originally caused the agreement and caused the employees to acquiesce in it, continues to operate. *To avoid exclusion from the large share of the market consisting of all projects with AGC general contractors, the subcontractors and their employees must continue to be bound by the union agreement and its union security obligation.*

d. The Board argues that "nonunion employees are not frozen out of the job market" because under the union shop clause employees need not actually join the union but need only pay union initiation fees and dues[24] and it is unlawful for a union hiring hall to discriminate against those employees it represents who have not become members (Brd Br 29). Of course, these same legal principles governed when *Connell* was decided, yet the Court characterized that clause as "an almost unlimited organizational weapon" (421 US at 631). The reasons for this, carefully avoided by the Board, are clear. While an employee who works under a collective bargaining contract which, like Local 701's contract (J.A. II 15-16), contains a union security clause, need not become a member of the union, he must meet all the financial obligations of union membership and also *must accept the union as his exclusive bargaining representative*. It is the union's status as exclusive bargaining representative for each employee in the unit—not "membership" in the union—which is the most significant element of the union-employee relationship. An employee who is deprived of free voice in the selection of his representative through the coercion of a boycott clause like that here loses his statutory right to select another union or no union at all; is faced with substantial

[23]The employer's "right" to repudiate a prehire contract is strictly limited, at best. The Board acknowledges that this right exists only for employers who do not have stable work forces and only on jobs where the union at no time represented a majority of the employees (Brd Br 28-29). However, according to two circuit courts even under those circumstances, an employer who repudiates a prehire contract remains liable for all the fringe benefit payments provided for in that contract for all covered work performed throughout the contract's full term, *Contractors, Etc. v. Associated Wrecking Co.*, 638 F2d 1128, 1134 (8th Cir 1981); *New Mexico Dist. Council, Etc. v. Mayhew Co.*, 664 F2d 215, 220 (10th Cir 1981). Under these authorities the employer's "right" of repudiation is illusory indeed.

[24]The current initiation fee of Local 701 is $1,000. Its dues are $96 per quarter.

barriers to replacing his representative; and is bound by the acts of the representative forced upon him in vital matters such as strike decisions, negotiation of all wages and benefits, and decisions whether to process the employee's grievance. Any employee of a subcontractor who is unwilling to give up his statutory right of free choice and to accept the specific union—here, Local 701—as his exclusive representative on these vital matters, will be discharged and ineligible for employment on any job within Local 701's monopoly. Thus here, as in *Connell*, the boycott subcontractor clause intrudes deeply upon employees' § 7 rights and operates as a massive top-down organizing device.

e. The Board argues that employees of nonunion subcontractors with whom the union has a primary dispute "are protected against secondary picketing designed to force them off their current job" since Congress did not overrule *Denver* (Brd Br 29). But by the Board's rule they are *not* protected from picketing of *all* the general contractors' jobs to force each general contractor to agree to exclude them from all future jobs if they do not agree to Local 701's representation.

f. The Board argues that the union cannot picket to enforce the subcontractor clause (Brd Br 29). But under the Board's rule the union can picket to *secure* the clause and then enforce the clause in court, forcing the general contractor to pay twice for subcontracted labor if he uses disfavored subcontractors.

7. **The Board's effort to reconcile its ruling with *Connell* is seriously flawed.** The Board had refused to issue a complaint in that case, and now seeks to narrow *Connell* into oblivion.

The Board disregards *Connell's* reasoning which, as shown in our opening brief (pp 15-18), limited the proviso to its purpose and held it inapplicable to a subcontractor clause identical to this in a context where the union's members were never employed by the general contractor. The Board does not even try to explain how the Board's rule— that the mere presence of one union member employed by the general contractor at some time on some job legalizes top-down organizing at all times on all jobs—can be squared with *Connell's* reasoning.[25]

---

[25] It is noted that a decision by this Court that this union signatory clause violates § 8(e) does not subject the parties to antitrust damages in the absence of a purpose of forcing other employers out of business. *Commerce Tankers v. Nat. Maritime U. of America*, 553 F2d 793, 801-802 (2d Cir 1977), cert den 434 US 923 (1977); *United Mine Workers v. Pennington*, 381 US 657, 672-673 (1965); *Consol. Exp., Inc. v. N.Y. Shipping Ass'n.*, 602 F2d 494, 519-521 (3rd Cir 1979), vacated on other grounds, 447 US 490 (1980).

Rather, the Board argues that the *Connell* clause was "novel" and that *Connell* is merely a patch on a leak in § 8(b)(7)(C). The claim that *Connell's* clause was "novel" is unsupported in the record and is contrary to the Board's General Counsel's prior statement that such clauses were "commonplace" in 1959 (see our Op Br pp 40-41). More importantly, *Connell* did not rule on the ground of "novelty"; it examined the purpose of the proviso and found that purpose inapplicable. That purpose is also inapplicable to this clause (*Id* at 36).

The Board argues that the union in *Connell* avoided the prohibition of § 8(b)(7) against recognitional picketing by disavowing any recognitional objective; it was solely for that reason (the argument continues) that this Court was forced to find another section of the Act to prohibit the picketing of Connell and accordingly held that the clause violates § 8(e) (and therefore picketing for the clause would violate § 8(b)(4)(A)). On the other hand (the Board argues), whenever a union puts its subcontractor clause in a full blown labor contract and pickets a contractor with the demand that he recognize the union and sign the contract (subcontractor clause and all) then § 8(b)(7) applies and there is no need to find a § 8(e) violation (Brd Br 32-34). This description is entirely foreign to *Connell*. Nowhere does *Connell* even refer to 8(b)(7) except as a part of Congress' effort "to *limit* 'top-down' organizing" (421 US at 632, emphasis added). This cannot be distorted, as the Board does, into an intent to *permit* top-down organizing whenever § 8(b)(7) applies.

But even more significantly, the Board's argument is that *Connell* merely "assured" that picketing for subcontractor clauses be limited by *some* rule—unions with "collective bargaining relationships" being subject to § 8(b)(7) and "stranger" unions subject (by *Connell*) to § 8(b)(4)(A) (Brd Br 34). This is utterly wrong. As we elsewhere show (Ore AGC Br pp 47-48), and as the Board concedes, Local 701's picketing of these AGC contractors to secure this subcontractor clause "is not subject to the restrictions of Section 8(b)(7)" (Brd Br 34, n. 37). *Under the Board's rule Local 701 could lawfully picket indefinitely to secure this subcontractor clause.*

The Board argues that these AGC contractors "'may resist any attempts to secure a subcontractor agreement by asserting [their] own bargaining position and presenting [their] own demands'" (Brd Br 33, n. 34, quoting the majority below, and see p 34-35, n. 37).

Clearly this broad subcontractor clause cannot be justified by the theoretical notion that the employers could have taken a strong bargaining position on it, resisted a picket, and refused to agree to it. If Congress had accepted this justification, then it would have been unnecessary to outlaw such clauses in any industry. Furthermore, it would leave the protection of employee rights entirely to employers (who do not even employ the affected employees), which is wholly inconsistent with the basic design of the Act.[26]

Rather than even discuss *Connell's* reasoning, the Board extracts two or three phrases, presumes they mean that secondary subcontractor clauses are lawful whenever there is a "collective bargaining relationship" and argues that a particular phrase in *Connell* should be read in the disjunctive rather than conjunctive to achieve that conclusion (Brd Br 35). Gramatically either reading is possible. But such arguments are not productive. This Court resolved the issue in *Connell* by examining the relevant policies and will do so here. Those same policies render this clause outside the protection of the proviso.[27]

8. The Congressional purpose must not be frustrated by literalism. The unions' lengthy argument for a literal reading of § 8(e) and its proviso (U Br 7-9) warrants only a short final

---

[26]Here, for example, there are fundamental ways in which the interests of general contractors are inconsistent with subcontractors' employees' right of free choice. While general contractors desire the flexibility of dealing with all subcontractors, many general contractors are unwilling to take a strike to gain this flexibility for several reasons: (1) the alternative to a signatory clause would likely be a standards clause, which would remove any incentive based on lower labor rates; (2) even with a signatory subcontractor clause all general contractors having labor contracts with Local 701 suffer the same restraints and resulting competitive disadvantage among themselves; and (3) in contrast, the union's demand for a signatory clause is likely to be firm since the signatory clause does the union's organizing and enlarges its membership and its coffers.

[27]The Board notes that Connell uniformly subcontracted the mechanical work covered by the Local 100 contract (Brd Br 31). But many general contractors in AGC uniformly subcontract many kinds of operating engineer work (such as crane operation and concrete pump operation) covered by Local 701's contract. With respect to all such work they are no different than Connell. By the Board's logic Local 701 could top-down organize plumbers as well as crane operators by simply including the plumbers classification in its contract. The scope of the union's right to top-down organize cannot reasonably depend on the breadth of coverage of the union's contract, and become legalized by the employer's employing one of the union's members on a job somewhere. But the Board effort to limit *Connell* to its precise facts brings that absurd result.

comment. "This Court had no difficulty in rejecting [an] overliteral interpretation of [§ 8(e) of] the Act" in *National Woodwork* (Justice Brennan in *NLRB v. Pipefitters (Plumbers, Local 638)*, 429 US 507 at 534 (1977)). This Court in *Connell* again rejected literalism and required a subcontractor clause to be "'within [the proviso's] spirit, ... within the intention of its makers'" (421 US at 628). The Board itself has cautioned when interpreting § 8(e) that it must be given a "reading [which] gives hospitable scope to the competing interests which Congress here sought to balance" and care must be taken not "to pay observance to slavish literalism and to frustrate the congressional objective" *Construction, Production, Etc., Local 383 (Colson and Stevens)*, 137 NLRB 1650, 1652, n. 7 (1962), rev'd in part 323 F2d 422 (9th Cir 1963).

The deeper the search into the legislative history the clearer it is that the objective of Congress was not to allow the top-down organizing caused by this broad signatory subcontractor clause. Nor did Congress intend to allow it simply because the clause was sought or secured in a "collective bargaining relationship"—that is, where the union puts the clause in a full labor contract and the general contractor may employ a union member some time on some job. Construction unions can obtain all the protection which Congress intended for them through jobsite union standards clauses, and through signatory clauses confined by the jobsite friction rule to be operative only at the particular jobsite when the union's members employed by the general contractor are present. To allow such unions to exceed these limits advances no congressional purpose and defies a "major aim" of the Act.

CONCLUSION

For the above reasons the relief requested in our opening brief should be granted.

Respectfully submitted,
Lewis K. Scott
David H. Wilson, Jr.
Counsel for Petitioner,
Oregon-Columbia Chapter, AGC